Supreme Court, U.S.
FILED
SEP 18 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1608

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

IVAN BULJUBASIC,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

SECOND SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI PURSUANT TO RULE 22.6

FREDERICK F. COHN
205 W. Wacker Drive
Chicago, Illinois 60606
(312) 641-0692
Attorney for Petitioner

No. 86-1608

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

IVAN BULJUBASIC,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

SECOND SUPPLEMENT
TO PETITION FOR WRIT OF
CERTIORARI PURSUANT TO RULE 22.6

Petition for Writ of Certiorari was timely filed.

The Seventh Circuit affirmed on January 7, 1987. Within fourteen days--on January 21, 1987--petitioner filed a Petition for Rehearing En Banc. This filing of the Petition for Rehearing En Banc was timely under Rule 40 of the United States Court of Appeals for the

Seventh Circuit (formerly Circuit Rule 16). It also met the requirements of Federal Rule of Appellate Procedure Rule 35. The document was entitled "Petition for Rehearing En Banc."

On February 2, 1987, the United States Court of Appeals for the Seventh Circuit denied the Petition for Rehearing. Petition for Writ of Certiorari was mailed to the Court with an appropriate affidavit of mailing pursuant to Rule 28 on April 2, 1987, and under the rules of this Court would be deemed timely filed.

An issue was raised by the Clerk of this Court because the Order of the Seventh Circuit denying the Petition for Rehearing, for some reason absolutely incomprehensible to counsel and to the clerking staff of the Seventh Circuit Court of Appeals, indicates that a

suggestion for rehearing en banc (without a petition for rehearing) was filed.[1] The order reads:

> "Defendant-appellant filed a suggestion of rehearing en banc (without a petition for rehearing) on January 21, 1987. No judge in regular active service has requested a vote on the suggestion of rehearing en banc. The suggestion of rehearing en banc is DENIED."

The Clerk raised an issue of whether what was denied was in fact a Petition for Rehearing.

At the time that the Supplement to Petition for Writ of Certiorari was filed arguing to the Court that the matter was timely filed, a motion was also filed in the Seventh Circuit to modify the language of the Order dated February 2,

---

1. In response to that issue, the first Supplement to Petition for Writ of Certiorari was filed.

1987. On September 3, 1987, the Seventh Circuit granted such motion, entering an Order so that its prior Order have added to it language which reads:

> "Treating the suggestion of rehearing en banc as a petition for rehearing, we deny the petition."

This most recent Order of the Court of Appeals is attached as Exhibit 1.

Based on this Order, there is no dispute that the Petition for Certiorari was timely filed.

Respectfully submitted,

FREDERICK F. COHN
Attorney for Petitioner
205 W. Wacker Drive
Suite 1515
Chicago, Illinois 60606
(312) 641-0692

EXHIBIT 1

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

September 3, 1987

Before
Hon. WALTER J. CUMMINGS, Circuit Judge
Hon. RICHARD D. CUDAHY, Circuit Judge
Hon. FRANK H. EASTERBROOK, Circuit Judge

UNITED STATES OF AMERICA	) Appeal from the) United States) District
Plaintiff-Appellee	) Court for the) Northern District
No. 86-1263 vs.	) of Illinois,) Eastern Division.
IVAN BULJUBASIC	) No. 84 CR 752
Defendant-Appellant.	) Barbara B. Crabb,) Judge

ORDER

Buljubasic has filed a "Motion to Modify Language of Order Dated February 2, 1987". Since the mandate has issued in this case, we must construe this motion as a request that we recall our mandate and modify the language of our order. We infer from the "Motion to Modify" that the language of our order has caused Buljubasic some problems in dealing with the Clerk of the Supreme Court. Having no desire to deny Buljubasic his opportunity to seek review of our decision, we now recall the

mandate and modify the order of February 2 by adding the following language: "Treating the suggestion of rehearing en banc as a petition for rehearing, we deny the petition."

The statement in the motion that the order of February 2 is "absolutely incomprehensible" suggests that Buljubasic's lawyer does not understand the difference between a petition for rehearing and a suggestion of rehearing en banc. The document filed with this court was styled: "Petition for Rehearing En Banc." Although the practice of the court has varied from time to time, the Practitioner's Handbook for Appeals to the United States Court of Appeals for the Seventh Circuit 62 (1987) warns counsel: "Do not mislabel the suggestion [for rehearing in banc] as a 'Petition for Rehearing In Banc.' There is no such thing. Depending on whether it is filed with a regular petition for rehearing, the correct label will be either 'Petition for Rehearing, with Suggestion for Rehearing In Banc' or merely 'Suggestion for Rehearing In Banc.'" See also Fed. R. App. P. 35(c), distinguishing between petitions for rehearing and suggestions of rehearing en banc. Counsel may request rehearing by the panel, rehearing by the full court (en banc), or both. Only a petition for rehearing by the panel requires a response from the court or affects the time to seek certiorari. Fed. R. App. P. 35(b) and (c); Stern, Gressman & Shapiro,

Supreme Court Practice 313 (6th ed. 1986). When a document is labeled "Petition for Rehearing En Banc", a natural conclusion is that counsel has mislabeled his "suggestion" as a "petition" and seeks only review by the full court. If counsel also wants review by the panel, the petition must say "Petition for Rehearing, with Suggestion for Rehearing In Banc", as our practitioner's manual explicitly states. As counsel was apparently unaware of proper appellate practice, we have amended our order. We trust future documents will accurately reflect counsel's objectives.